STATE PETROLEUM BOARD MEETING TO REVIEW CLAIMS
BOARD MEETING MINUTES
SEPTEMBER 10, 2003

Note: copies of this recorded meeting on cassette tape can be obtained from Karen Fleming, NDEP, 333 W. Nye Lane, Room 206, Carson City, Nevada 89706-0851 or by calling (775) 687-9367

CALL TO ORDER

Mr. John Haycock, Chairman, called the meeting to order at 10:00 a.m. The meeting was videoconferenced at the Legislative Counsel Bureau Chambers in the State Legislative Building (Room 2144), 401 South Carson Street, Carson City, Nevada and the Legislative Counsel Bureau in the Grant Sawyer Building (Room 4406), 555 Washington St., Las Vegas, Nevada.

BOARD MEMBERS PRESENT

Mr. John Haycock, (Chairman), Mr. Allen Biaggi, Ms. Linda Bowman, Mr. Mike Miller, Ms. Karen Winchell, Ms. Joanne Blystone.

BOARD MEMBERS ABSENT

Mr. Mike Dzyak

STAFF PRESENT

Mr. Gil Cerruti (Supervisor, Petroleum Claims Branch), Mr. Jim Najima (Bureau Chief from NDEP in Carson City), Mr. Quint Aninao (Corrective Actions Supervisor), Mr. Hayden Bridwell, Mr. Bennett Kottler and Ms. Karen Fleming (Petroleum Fund), Mr. Bill Frey (Attorney General's Office), Ms. Shannon Harbour and Ms. Chris Andres (Las Vegas NDEP) and Ms. Susan Gray (Las Vegas Attorney General's Office).

APPROVAL OF THE AGENDA

Mr. John Haycock began the meeting by requesting the Board to approve the agenda. Mr. Gil Cerruti announced that there was one change on the agenda relating to Case Number 99-242 under Old Cases, Other Products. He stated that this should be a non-consent item.

Ms. Joanne Blystone motioned to approve the Agenda. Mr. Allen Biaggi seconded the motion. Motion carried unanimously.

MINUTES

Mr. John Haycock motioned to approve the minutes from the June 11, 2003 meeting. Ms. Linda Bowman seconded the motion. Motion carried unanimously.

STATUS OF THE FUND STATEMENT

Mr. Cerruti introduced the staff that were in attendance. In addition to himself, the attending staff included: Jim Najima (Bureau Chief from NDEP in Carson City), Quint Aninao (Corrective Actions Supervisor), Hayden Bridwell, Bennett Kottler and Karen Fleming (Petroleum Fund), Bill Frey (Attorney General's Office), Shannon Harbour and Chris Andres (Las Vegas NDEP).

Mr. Cerruti reported that the Status of the Fund Report is a little different as it has a front and backside. The backside is for fiscal year 2003 and the front side is fiscal year 2004, which began on July 1, 2003. The balance forwarded from fiscal year 2003 is approximately $2.25 million dollars. So far this year, $88,000 in tank fees has been collected. There is nothing recorded for the 3/4 of one cent petroleum fee yet because, although the fee was collected for the month of July, it will not be put on the books until approximately the end of September.

Expenditures so far this year include $4,000 in transfers, with total liabilities to the Fund of $1.25 million. All together, that leaves actual Fund cash available for this meeting at just over one million dollars. It is recommended that the Board approve a total amount of $1.6 million at this meeting, which would exceed the available Funding by $600,000 according to these figures. Mr. Cerruti commented that the petroleum fee was reinstated on July 1st of this year and has been collected for the months of July and August by the jobbers. The fee, which was collected for July, does not have to be reported to the Department of Motor Vehicles (DMV) until the end of August and preliminary figures have recently been reported to the Department of Motor Vehicles. He stated that Ms. Karen Winchell from the DMV has assured him that presently the collections for July represent just fewer than one million dollars. When this amount of money is added to the existing million dollars, which it will do by the end of September, there will be a total of two million dollars available for reimbursement. This means that all the claims approved by the Board at this meeting would be paid in full.

Mr. Haycock requested to know if the Board can make the assumption that any claims would be paid in full. Mr. Cerruti confirmed that this was correct, unless the amount exceeds two million dollars.

For the record, Mr. Haycock mentioned that Miss Susan Gray, Las Vegas Attorney General's Office, was also in attendance.

Mr. Haycock requested to know if there were any questions regarding this report. There were no questions.

DETERMINATION OF FUND COVERAGE

IV.A. Resolution to Grant Petroleum Fund Coverage with a 40% Reduction to 7-Eleven #26707, 600 North Las Vegas Blvd., Las Vegas, Nevada – Resolution 2003-08.

Mr. Hayden Bridwell, from the Petroleum Fund, presented the resolution to propose a reduced level of coverage for 7-Eleven Store No. 27607, located at 600 N. Las Vegas Boulevard in Las Vegas.

Mr. Bridwell stated that dissolved-phase petroleum hydrocarbon contamination was discovered beneath the site in February of 1999 during assessment activities, and free-phase gasoline product was discovered on the ground -water beneath the facility in November of 2000. 7-Eleven operated this leaking UST system for 34 months before finally taking it out of service in December 2001. This is the reason for coming before the Board to recommend a reduction in reimbursement.

Mr. Bridwell explained in detail that in August of 1998, Tosco conducted some assessment activities for discovery of a release, which had occurred at a UNOCAL placard station right across the street from the 7-Eleven. A groundwater monitoring well that Tosco installed in the street, adjacent to the 7-Eleven facility indicated that a dissolved petroleum hydrocarbon plume had migrated that far. 7-Eleven was required to do their own assessment, at that time, to ascertain if they had their own problem. 7-Eleven did their first phase of assessment in February of 1999; that assessment revealed that they had a dissolved-phase petroleum hydrocarbon plume beneath their site. Another assessment was done in October of 1999 and by then it had been determined that they had an onsite source for this release. Even though they had a known onsite source for the release, 7-Eleven continued to operate the UST system. As mentioned earlier, in November of 2000 free phase petroleum product was discovered in monitoring wells on the site and from this time until the UST system was taken out of service, in December of 2001, 7-Eleven's consultant observed the free product to increase in thickness and also to laterally spread across the site.

Again, during this time period 7-Eleven continued to operate the UST system. During November and December 2001, their in-tank monitoring system indicated that one of the tanks had a release. In December 2001 they did an investigation of tank number one. This was a petroscope investigation, where they actually put a camera in the tank. They emptied the tank, which revealed that the single-walled fiberglass tank had literally deteriorated and it had

been leaking. On July 5, 2002, we received a Petroleum Fund Coverage Application from 7-Eleven indicating that this deteriorated tank was the source of the release, discovered in 1999 and the source of the free product was discovered in 2000.

Mr. Bridwell next discussed regulation 40 CFR 280.52, a copy of which the Board received in Attachment A. This regulation addresses the Release Investigation Confirmation Steps and requires that owners and operators must immediately investigate and confirm all suspected releases within seven days or another reasonable time period specified by the implementing regulatory agency, using either of the following methods or another method approved by the regulatory agency. One method is a systems test which is basically tightness testing. Owners and operators must conduct tests pursuant to tightness testing requirements stipulated in 40 CFR 280.43C and .44B to determine if a leak is present; .43C indicates that the method of tightness testing must be capable of detecting a release of 1/10 of a gallon per hour; .44B mimics this same type of data for the piping. If tightness testing reveals that a leak is indeed occurring, then it must be identified and stopped and the source of the release has therefore been discovered. However, if a leak is not detected, but the reason that they're doing this site check is because they have contamination at the site, they must continue doing an investigation for the release source. At that point, regulation 40 CFR 280.62 requires them to perform a site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present to appropriately identify the presence and source of the release.

At this point, Mr. Bridwell opened the presentation to questions.

Ms. Linda Bowman requested to know when the first claim for coverage on this site was filed. Mr. Bridwell replied that on July 5, 2002, the initial application for coverage on the site was received. Ms. Bowman next requested to know if there were any regulatory notifications or orders that weren't complied with during the 1999 period. Mr. Bridwell stated that there were no other violations to his knowledge, and that the only violations he was aware of are violations of 40 CFR 280.52 and 62. Ms. Bowman requested to know if those violations were brought to the attention of the owner at the time of the violation. Mr. Bridwell stated that, to his knowledge, they were not. He suggested that the Board hear from the program or case officer regarding this issue. Ms. Bowman requested to know if this would have been Clark County Health District. Mr. Bridwell answered her question in the negative, due to the fact that it was a groundwater problem, it was immediately referred to NDEP and it has been regulated from the Las Vegas office. Ms. Bowman asked if there was a case officer with knowledge of this case present.

Mr. Haycock requested to know if the case officer was present. It was determined that Ms. Shannon Harbour was in attendance. Mr. Bridwell stated that the original case officer was someone who preceded her.

Mr. Bridwell stated that a copy of 40 CFR 280.62, Initial Abatement Measures and a Site Check, had also been provided to the Board in Attachment A. Mr. Bridwell stated that this regulation states that unless directed to do otherwise by the implementing agency, owners and operators must measure for the presence of a release where contamination is most likely to be present and unless the presence and the source of the release has been confirmed and in accordance with the site check required by 280.52. He stated that 280.52 and .62 work, as sort of a loop, to assure that the source of an ongoing release is discovered within seven days. 7-Eleven's failure to identify and repair the source of the release from the subject UST system for thirty-four months following release discovery constitutes violation of both 40 CFR 280.52 and 280.62. Mr. Bridwell stated that Board Resolution 94-023, which was also included in Attachment A, and had been adopted by the Board in November 1994, requires NDEP to propose percentage reductions in Fund coverage pursuant to violations of certain Federal UST and LUST regulations. Non-compliance with 40 CFR 280.52 and 280.62 each require a proposed 40% reimbursement reduction. The resolution, however, allows NDEP to recommendation for reimbursement a reduction pursuant to the largest single violation, which in this case is 40%. Also pursuant to the resolution, the Board has the authority to adjust the proposed reduction as they see fit from 0%, meaning full coverage, to 100% meaning complete denial. Pursuant to the resolution, a 40% reduction was recommended.

At this point, Mr. Haycock requested to know if there were any additional questions.

Ms. Bowman requested to know if there was anyone present on behalf of the owner of this site. It was stated Mr. Matthew Grandjean from Secor was present at the Las Vegas meeting location. Mr. Grandjean introduced himself as the CEM for 7-Eleven. Ms. Bowman requested to know if, in his opinion, the failure to comply with these regulations caused the contamination to spread. Mr. Grandjean replied: "Yeah, possibly. Once the free-product was observed, I believe in November of 2000, at that point I advised 7-Eleven, actually I wasn't the CEM at that time, I became a CEM in January of 2001, so at that point and then as I took over the project, we advised 7-Eleven to continue to do tank testing and review inventory records, review the automatic tank gauging system and everything checked out okay, so at that point 7-Eleven decided that they weren't going to do anymore investigation." Mr. Haycock requested to know if the consultant Mr. Bridwell referred to early on was an in-house consultant for 7-Eleven. Mr. Bridwell responded that the consultant was Secor from day one. Mr. Haycock requested a definition of the term "day one". Mr. Bridwell responded that "day one" would have been when they received a requirement from NDEP to do their own assessment pursuant to Tosco discovering their off-site plume from an adjacent UNOCAL facility. Ms. Bowman requested to know if this was in 1999. Mr. Bridwell responded that August 1998 was when Tosco performed their assessment; it was on a UNOCAL placard station directly across the street from the 7-Eleven. Then, 7-Eleven received direction to do their own assessment from NDEP.

Ms. Bowman requested to know if NDEP concurred with what Secor said their recommendation was, not to do any more investigation. Mr. Bridwell stated that the case officer should answer this question. The question was repeated: Did NDEP concur with the Secor recommendation to 7-Eleven that no further activity be undertaken to try to identify the source of the contamination? Ms. Shannon Harbour from NDEP, and case officer for this site responded. She stated: "As far as I know, NDEP did not concur with those actions, but that was prior to my taking over this site. I would have to look into it." Ms. Bowman requested to know if the file indicated whether any additional regulatory orders went out that 7-Eleven didn't comply with. There were no other known orders.

Ms. Bowman asked what the good cause for waiving the filing of the petition for coverage was. She stated that it was not in the petition, but she assumed there was some reason for allowing the length of time to pass from initial discovery until July of 2002 when the claim was filed. Mr. Cerruti responded that it appears they have not incurred remediation costs that would have exceeded the deductible so they were not bound to submit a claim. This opinion was based on the information in front of Mr. Cerruti.

Ms. Bowman requested to know if there was knowledge of a leak and is there a requirement to file for eligibility? The response was this is optional. Ms. Bowman next requested clarification of the l2-month deductible. Mr. Cerruti stated that the 12 months is a regulation requiring the submittal of the first claim within 12 months of leak discovery, and failure to do that is cause for denial of the claim. He stated that he has the authority to overrule that if good cause is shown. He stated that one of the requirements is that they did not meet the deductible. Ms. Bowman requested to know what discovery date there had been used. Mr. Cerruti replied that he thought it was the l999 date.

Mr. Haycock requested a response from the 7-Eleven representative. The question was if their client took exception to this ruling. A company representative from 7-Eleven was not in attendance. Mr. Haycock stated that this leaves a certain perception that 7-Eleven does not strongly oppose the proposed resolution. Mr. Bridwell stated that he has not received any word from 7-Eleven, either verbally or in writing that they wish to appeal this. It was stated that it appeared to be fair to make an assumption that they concur with the proposed resolution.

Mr. Allen Biaggi motioned to approve the Resolution to grant petroleum coverage with the 40% reduction to 7-Eleven Number 26707. Ms. Joanne Blystone seconded the Motion. Motion carried unanimously.

IV. B. Resolution to Grant Petroleum Fund Coverage with a 40% Reduction to the Waterhole, 475 North Moapa Blvd., Overton, Nevada, Case No. 99-273 - Resolution 2003-09.

Mr. Hayden Bridwell presented this agenda item. Mr. Bridwell stated that at the June 11, 2003, meeting he presented a resolution to deny coverage for this facility pursuant to Mr. Leavitt's failure to submit his initial reimbursement claim within 12 months following release discovery pursuant to NAC 590.780. Mr. V.K. Leavitt, the owner, is the responsible party referenced herein. After hearing rather detailed talks from NDEP, Mr. Leavitt himself, consulted Mr. Keith Stewart. The Board waived the 12-month deadline and requested that Mr. Bridwell present a resolution to provide a reduced level of Fund coverage at this Board meeting today, pursuant to the policies set forth in Resolution 94-023.

Mr. Bridwell provided a review of the issue, stating that three separate petroleum releases have been documented at this facility. One was discovered in August of 1999, it was a gasoline product piping release. Another was discovered in March of 2001, which was an apparent release of diesel from the UST system turbine. Another release was discovered in July of 2001, which was another gasoline piping release. Mr. Bridwell stated that Mr. Leavitt has requested Fund coverage for cleanup of the release discovered in July 2001 only. Results of recent assessment activities conducted at this site by Mr. Stewart of Stewart Environmental indicate that the two earlier releases, discovered in August 1999 and the March 2001, have left no impact on the contamination that is currently at the site. It is indicated that all the contamination onsite, therefore, has come from the release that was discovered in July 2001. As far as any of the assessment cleanup activities that will be performed at the site, the two early releases are not an issue.

Mr. Bridwell reported that in order to facilitate this recommendation for reduced Fund coverage he evaluated documented violations of Federal UST compliance and LUST compliance regulations. He stated that at the last Board meeting, his presentation only centered around NAC 590.780, which is the 12-month rule. Pursuant to his research from December 22, 1998 to September 2, 2003, Mr. Leavitt was out of compliance at one time or another, with various UST compliance regulations on seven separate occasions. Mr. Leavitt was out of compliance with various LUST compliance regulations on an additional seven separate occasions. Each violation is detailed in the resolution. These violation details begin on page two and continue through page four of the resolution. The summary of these violations is listed on page four, point 10. The accrued total of these violations is a proposed reduction of 380%. The violations associated with the release discovered in July 2001 add up to an accrued amount of 120% of the proposed reimbursement reduction. Resolution 94-023 requires that we propose the reimbursement reduction associated with the highest single violation. In this case it is 40%. The Board has the authorization to adjust this if they choose to.

Mr. Bridwell mentioned two additional points. The first was something he spoke on at the June 2003 Board meeting. Mr. Bridwell stated that he had indicated that Mr. Leavitt had been continuously enrolled in the Petroleum Fund throughout all three of the discovery of these releases. That was an error. Mr. Leavitt was not enrolled in the Petroleum Fund during the time the August 1999 release was discovered. Mr. Bridwell stated that this is really not an issue currently; however, he wanted to set the record straight. The second issue was also presented at the June 2003 Board meeting. At the June meeting Mr. Leavitt indicated that one of the reasons he did not perform the assessment and remediation activities that he was required to do was because he was not clear on Fund regulations and policies and also he was not clear why he needed a CEM. Mr. Bridwell reported that he looked into the records and in Attachment B a summary table is provided documenting situations where Mr. Leavitt was provided with information regarding the Fund and also informed on the necessity to hire a CEM. In summary, during the time period from March 4, 1999 to February 24, 2003, Mr. Leavitt was provided with information regarding the Petroleum Fund on no fewer than nine occasions. These are documented occasions. During this same time period, Mr. Leavitt was provided with information regarding the CEM program and the necessity to have a CEM on line no fewer than 11 times.

Mr. Bridwell stated that it is recommended that this facility receive Fund coverage with 40% reimbursement reduction pursuant to Resolution 94-023. At this point, the presentation was opened for questions.

Mr. Biaggi requested to know how you separate out costs with commingled plumes, such as in this case? Mr. Bridwell replied that, in this case, there are no co-mingled plumes. Mr. Cerruti stated that, to his knowledge, there has been only one case where this has been the circumstance. Mr. Cerruti stated that he believed this was the Minden Beacon case. In this situation, a calculation was created using the hydrostatic flow rate. It is possible to tell how fast the plume is moving and you can back-calculate how much the plume has moved over a certain period of time. A direct translation from percentage of increase in plume size, based on engineering calculations, to percent contribution was performed to calculate the different costs.

Mr. Biaggi re-phrased his question to ask how did you decide to not include the costs of the previous two releases and only include the most recent release? Mr. Cerruti replied that in the two previous releases, Keith Stewart of Stewart Environmental went out and did a site assessment within the last two months and looked at those for evidence of contribution to the plume from those last two releases and in both cases the analytical results established non-detect going down to ground water. Therefore, the conclusion is that neither of the earlier releases contributed to the current plume. They were very minor and addressed at the time.

Mr. Haycock introduced Keith Stewart with Stewart Environmental who was representing Mr. Leavitt and the Waterhole. Mr. Stewart stated that the other two releases have been assessed and don't appear to have any impact to this release. Mr. Stewart stated that they have provided the assessment data requested, both by the Board and Mr. Quint Aninao, the case officer, and that they have put four wells on the site; one that was a non-detect. There is one in the source area, which reveals MTBE contamination at about 18,000 parts per billion and Benzene about 8,700 parts per billion.

One of the down gradient wells is non-detect towards the northeast and towards the southeast there is MTBE at only 180 parts per billion and Benzene at about 740. Therefore, the data indicate that there is a groundwater impact at the source area. The data do not indicate that there is a significant off-site migration at this point. Additional assessment towards the southeast still needs to be completed. In comparison to many other sites, the concentrations are not that significant at this location. Mr. Stewart stated that they had been requested by the Board to present this information in evaluation of potentially providing coverage with less of a reduction.

Mr. Stewart stated that there is not a problem with the resolution, but that it was requested that the Board evaluate the data presented to look at the possibility of going to a 20% reduction considering the impact.

Mr. Biaggi requested to know if Mr. Leavitt had paid his $10,000 violation to Clark County. Mr. Leavitt stated that he has not paid it yet, and that he was under the belief that a bill would be sent to his company for this violation. Mr. Stewart stated that Clark County has not provided any documentation requesting the payment to his knowledge, and it was assumed that this is in the process. Mr. Biaggi next asked if this is granted, is Mr. Leavitt committed to conducting the complete and full cleanup? It was stated that he was committed to a complete and full cleanup. It was stated that a contractual arrangement to perform this assessment has been discussed and both Mr. Leavitt and Mr. Stewart had come to an agreement based on the state reimbursement and in taking care of the payments to make sure that the process can be completed. Mr. Stewart stated that a fair amount of money, the amount of approximately $25,000, has been expended to comply and correct Petroleum Fund assessment criteria.

Mr. Haycock requested to know if there were any other questions. There were none.

Ms. Linda Bowman moved to approve Board Resolution 2003-09 for the Waterhole. Mr. Mike Miller seconded the Motion. Motion carried unanimously.

IV.C. Resolution to Grant Petroleum Fund Coverage with a 40% Reduction to Union 76 Station #5257, 4401 W. Sahara Avenue, Las Vegas: State Facility ID #8-000743, Petroleum Fund (Fund Case 97-093) Resolution 2003-11

Mr. Cerruti requested verification that the Board had received copies of a letter for ConocoPhillips. The Board confirmed that this had been received.

Mr. Bennett Kottler was introduced to present the resolution. Mr. Kottler stated that ConocoPhillips acquired Unocal Corporation from the subject facility by means of a wholly owned subsidiary, Tosco Corporation, on April 1, 1997. The subject gasoline contamination of this resolution was discovered on June 5, 1992, during the investigation of petroleum hydrocarbon contamination found beneath the removed waste oil underground storage tank and during an investigation of discrepancies in the 87 octane gasoline statistical inventory record. Under the former owner, Unocal, an application for coverage under the Fund was never submitted. Furthermore, the facility was not in compliance with all applicable regulations.

Appendix I of this resolution lists four events from 1993 to 1994 for which Unocal was not in compliance with release reporting. On pages two and three of this resolution, additional incidents when Unocal was not in compliance are noted and they include that Unocal did not conduct an investigation of the release to identify the source or sources of the release or releases noted in Appendix I. In addition, Unocal complied with Clark County District Health Department's request for a corrective action plan 24 months late.

Mr. Kottler stated that he would like to clarify why this case has a 1997 designation to provide an understanding of this case. Petroleum Fund staff first learned about this case on June 25, 1997, upon receipt of an application for coverage under the Fund from ConocoPhillips. At this time, ConocoPhillips analyzed ground water from the site for NDEP for the very first time. MTBE was found in ground water at this time; however, an analysis for MTBE had not been previously conducted at the site. Without any prior information about MTBE contamination at the site, NDEP contended that the contamination could not be shown to have originated from a new release. Ultimately, ConocoPhillips agreed with NDEP's argument and withdrew its application for coverage for the MTBE contamination found in 1997. Nonetheless, after a coverage application was submitted in 1997, ConocoPhillips and Petroleum Fund staff engaged in discussions regarding the site. Having knowledge about the site at this time, NDEP made several requests for additional information necessary to make a Fund coverage determination including identification of the release source and proof of detection. The latter request from ConocoPhillips was made on July 7, 1997. The requested documents were not submitted to NDEP until March 17, 2000. Although ConocoPhillips submitted repair and maintenance records, it was not until a Tracer Tight test was completed on June 19, 2000 to investigate the free product in ground water at the site, that sufficient information was provided to determine eligibility of the site for Fund coverage. The two underground storage tanks in question were removed from the ground on February 20, 2001 and Conoco Phillips submitted an application for coverage to the Fund for the June 5, 1992 release on March 19, 2001. In accordance with Board Resolution 96-023 the Petroleum Fund administrator has waived the 12-month deadline to file an initial claim because good cause was shown for failure to comply with NAC 590.780. As noted on pages two and three of this resolution, the sum of the reimbursement reductions for violation of Federal Regulations for this case totaled to 300%. Resolution 94-023 allows NDEP to recommend a reimbursement reduction for the largest percentage associated with any single violation. NDEP therefore, recommends that the subject facility receive Fund coverage with a 40% reduction. In lieu of attending this meeting, ConocoPhillips has sent a letter in support of this resolution. Members of the Board should have a copy of this letter for their review. Upon conclusion, Mr. Kottler opened the presentation to questions from the Board.

Mr. Haycock requested that the chain of ownership be reviewed. It was stated that the leak was discovered while Union 76, Unocal Corporation, owned the service station in question. Tosco Corporation subsequently acquired Unocal Corporation and ConocoPhillips subsequently acquired Tosco. It was clarified that ConocoPhillips did not buy the station from another owner but that they bought the owner. ConocoPhillips has written a letter in general support of the resolution.

Allen Biaggi motioned to approve the Resolution to grant petroleum coverage with a 40% reduction to Union 76 Station Number 5257 on Sahara Avenue in Las Vegas. Ms. Joanne Blystone seconded the motion.
Discussion followed. Board member Bowman stated that, for purposes of the record, she needed to disclose that she has represented a Union Oil Company of California in the past. She stated that she has not represented UNOCAL or Union Oil Company of California on this site, and did not believe that her representation of them in other matters would affect her vote, but wished to have this placed in the record. Mr. Haycock disclosed that ConocoPhillips is one of his company's major suppliers; however, he did not feel that this mattered in this vote. He requested that the record reflect this acknowledgement. **Motion carried unanimously.**

IV.D. Resolution to Establish Time Limit for Submitting Invoices-Resolution #2003-12
Mr. Gil Cerruti presented this resolution. Mr. Cerruti began be requesting confirmation that the Las Vegas Board members had received the handouts relating to this presentation and passed out the same handouts to the Board members in Carson City.

He stated that Resolution 2003-12 was drafted for the purpose of establishing an expiration date for aged invoices being submitted to the Fund for reimbursement. He requested that members ask questions as needed during the presentation.

Mr. Haycock requested to know if they are contemplating invoices that were associated with cases that had been approved previously? Mr. Haycock re-phrased the question to ask if Mr. Cerruti was talking about invoices in which the Board hears and approves a case; the claim is paid subject to all the documented invoices received and then two years later another invoice is received. Mr. Cerruti confirmed that this was a good example. Mr. Cerruti stated that another example is a fresh claim that the Board has never reviewed, where included in that claim are aged invoices. He cited an example where four filing cabinet drawers with these types of claims were received just that morning.

Ms. Bowman requested to know if this would go to the Legislative Counsel Bureau as a regulation. Mr. Cerruti stated that it possibly would. He stated that the reasons for establishing an expiration date on invoices and without such a limit, old invoices representing costs incurred years earlier can and are being submitted now for reimbursement. These old invoices may have been lying dormant for many years, and should have been submitted for reimbursement years ago when the actual cost was incurred. Now they're being submitted to the Fund years later when it is difficult to verify that they represent legitimate remediation expenses and further, to verify proof of payment to vendors that may have long since discarded records or are no longer in existence. Currently, staff is experiencing aged invoices in some claim submissions and they have been advised to expect more submissions of these aged documents. The total amount of those outstanding potential claims against the Fund is unknown; therefore the total liability of the Fund cannot be determined. Upon the advice of counsel, staff intends to pursue the establishment of a time limitation for the submission of invoices by means of a regulation modification, rather than by Board resolution. Therefore, staff is recommending that the Board table this resolution, Resolution 2003-12. At this time, however, the Board has an option of directing staff to process reimbursement invoices older than three years only if they are accompanied by the required proof of payment. NAC 590.780, paragraph 4, paraphrased, states that if money from the Fund is paid to an operator **before** the operator pays a vendor, the operator shall not more than 30 days after receiving the money, provide the Division with confirmation of payment. In the case of these aged invoices, the vendor presumably would have already been paid and the submission of proof of payment as is required by NAC 590.780, paragraph 5. Submission of payment up front with the invoice

submission would preclude the necessity of trying to recover the Fund 's money should it later be determined that proof of payment could not be produced. This refers to three-year invoices, or older. Staff intends to return to the Board with a proposed regulation modification that provides for an appropriate time frame in which an invoice must be submitted to the Fund in order to be reimbursed.

There is a question as to what an appropriate time frame might be. NAC 590.780 sets the times in which an initial claim must be filed, that is within 12 months after discharge discovery, and which a final claim must be filed again within 12 months after completion of corrective action. Once the initial claim requirement is met, no time limit is specified for invoice submission as long as corrective action is ongoing. Input to date suggests that anywhere from 30 days to 3 years might be an appropriate time limit in which to submit an invoice to the Fund. At the June Board meeting, one of the speakers addressed the Board in the public forum and suggested 12 months was an adequate time frame. Staff is requesting input and suggestions from the Board on this resolution.

Mr. Biaggi requested confirmation that Mr. Cerruti was asking for two things from the Board. The first was if the Board desires to have a regulation imposed on this matter and to move forward. Board member Biaggi stated that his personal opinion is that's a good idea and that it is better as a regulation than as a policy. The other question being asked is if the Board wishes to require proof of payment. Mr. Biaggi stated that it appears to be a reasonable step and that it just makes sense that when an aged invoice is sent that the proof of payment should come forward and stated he was in support of that notion.

There was no further discussion. The resolution was tabled.

EQUIPMENT OWNER TRANSFER

V.A. Sale of Remediation Equipment from Cortez Gold Mine, Lander Mill Site Facility (Claim ID No. 93-126) to ECO Services, Inc. – Resolution 2003-13

Mr. Cerruti stated that this is a sale of remediation equipment from Cortez Gold Mine to ECO Services, Inc. He reported that it was actually being sold for the depreciated value of $4,639.30.

Ms. Joanne Blystone moved for approval of Resolution 2003-013. Ms. Linda Bowman seconded the Motion. Motion carried unanimously.

V.B. Transfer of Remediation Equipment from Eizman's Services Facility (Fund Case No. 93-100) to D & G Oil #1 (Claim No. 94-015) – Resolution 2003-10

Mr. Cerruti clarified that this is not a sale but a transfer of remediation equipment from one Petroleum Fund site, Eizman's to another petroleum site, D&G Oil, and this is just to notify the Board that that equipment transfer is being done that there will be transfer of value from/to the respective sites.

Ms. Joanne Blystone moved for adoption of Resolution number 2003-010. Ms. Linda Bowman seconded the Motion. Motion carried unanimously.

ADOPTION OF CONSENT ITEMS-REVIEW OF CLEANUP CLAIMS

Ms. Joanne Boylston moved for approval of Item Number VI, Heating Oil, and Numbers One through Nine. Mr. Mike Miller seconded the Motion. Motion carried unanimously.

Ms. Joanne Blystone moved for approval of Item Number VI, Above Ground Storage Tanks, Numbers One through Three. Mr. Haycock announced that he would be abstaining from this Agenda item. He requested that

Ms. Bowman conducted the meeting for this vote. **Mr. Mike Miller seconded the motion. Motion carried with one abstention.**

Ms. Joanne Blystone motioned to approve Item Number VI, Old Cases, Other Products, Items number One through Ninety-Nine, with the exception of Item Number Ninety-Seven, Case #99-242. Mike Miller seconded the Motion. Discussion followed. Ms. Bowman announced that she would abstain from Allied Washoe 92-062 and Avis Rent-A-Car 94-065 as she represents Allied Washoe on some environmental matters and would not want to vote on that item. On 94-065, Avis Rent-A-Car systems, she has abstained in the past on that matter as well. **Motion carried with one abstention.**

Mr. Haycock then returned the Board to Case Number 99-242: Miklin Enterprises: S & S Mini Mart.

Mr. Cerruti stated that, at the beginning of this meeting, he had requested that this item be made a non-consent item for the purpose of clarifying this particular case and expanding on it to the Board. He reported that staff is recommending that this company be reimbursed the recommended amount of around $58,000. He stated that he wanted to make the Board aware of the situation that this particular claim is for a steel tank that was lined with a polymer liner and the lining failed. Staff has worked with the owner to try to identify if there were any warranty applications that would apply in this case. The results of an investigation determined that the reason the liner separated from the tank and failed is because the tank moved. Mr. Cerruti advised the Board that every avenue has been pursued in an attempt to recover costs because of a warranty and there was none. Therefore, the Petroleum Fund will continue to submit claims for this case to the Board.

Ms. Joanne Blystone motioned for approval for reimbursements for Item Number 97, Case Number 99-242. Ms. Karen Winchell seconded the Motion. Motion carried unanimously.

EXECUTIVE SUMMARY REPORT

Mr. Cerruti reported that five new cases for evaluation have been received, bringing the total since inception of the Petroleum Fund to 1,161 cases. There are currently 310 active remediation sites. A total of 710 cases have been closed; 88 cases have been denied coverage; 42 cases have expired, and 11 cases are currently in pending status, either waiting submittal of additional information or awaiting initial staff evaluation for coverage. To date, over $101.8 million has been reimbursed from the Petroleum Fund.

At this time, Mr. Cerruti turned the discussion over to Mr. Bill Frey of the Attorney General's Office to address the claims of Mr. Patrick Taylor, purchaser of the Cave Rock Country Store formerly owned by Robert Hager and the Hager Family Trust, which is Petroleum Fund Case 98-076. Mr. Taylor has petitioned the Board for Petroleum Fund coverage. Mr. Cerruti stated that Mr. Haycock and Ms. Blystone had requested an opinion from the Attorney General's office regarding successor rights be provided to the Board before acting on Mr. Taylor's petition and so the matter was continued.

Ms. Susan Gray stated that she had not realized that this item was in the Executive Summary Report and did not feel it was the appropriate way to handle this matter under the Open Meeting Law. Mr. Frey clarified that he was not requesting for action to be taken. The only information he was attempting to provide to the Board was that this item would be discussed at the Board meeting coming up in December.

Mr. Cerruti stated that for the record that he has recommended Petroleum Fund coverage for the 7-Eleven at 600 N. Las Vegas Boulevard pursuant to Resolution 96-003. He stated that they have met good cause as explained earlier.

Ms. Bowman asked for additional information on the boxes of claims mentioned earlier in the meeting. Mr. Cerruti stated that they received four from Secor (ENSR, Int'l.- *corrected)* just as he left for the meeting. Ms. Bowman requested clarification that these invoices were not included in the status report. Mr. Cerruti confirmed that they were not.

PUBLIC FORUM

A. Keith Stewart with Stewart Environmental requested to know if Mr. Cerruti had pursued some of the firms discussed relating to the CEMs in southern Nevada to evaluate the process of finding an equipment storage location in Southern Nevada for equipment that is no longer in service. Mr. Cerruti stated that he had been on vacation and had taken no action on these firms, to date. Mr. Stewart requested that it put on record that every time they need a piece of equipment it has to be trucked down from Reno or shipped back. Mr. Cerruti stated that one of his concerns was anybody associated as a Certified Environmental Manager would also have some exercise of control of the equipment and would have a leg up on the other Certified Environmental Managers. Mr. Cerruti stated that he was hesitant to implement this unless there was a totally independent person who does not participate in the remediation projects.

B. Mr. Biaggi, speaking as a member of the Division of Environmental Protection, reviewed Senate Bill 58, which was passed by the 2003 session of the Nevada Legislature. This bill did two things for the Division of Environment Protection. First, it provided allowances for RCRA hazardous waste determinations to be made by a certified laboratory. More importantly, it also revised the requirements related to Underground Storage Tanks to include the ability for the Division to implement standards for certain Above Ground Storage Tank systems within the State of Nevada. Senate Bill 58 was passed by the Nevada Legislature and was signed by the Governor prior to the end of the first session. The intent of the Division in moving forward with this piece of legislation was to address tanks at marinas, and tanks that are floating upon water bodies within the State of Nevada. It was not the intention to go any further than that into construction tanks, farm and ranch tanks, or any other Above Ground Storage Tank systems. This issue came about as a result of issues related to Lake Mead and the concessionaires around that water body and with the lake levels dropping as dramatically as they are. Mr. Biaggi stated he wanted to state this for the record for the regulated and consultant community.

IX. CONFIRMATION OF THE NEXT BOARD MEETING.

Mr. Haycock announced that the next meeting is scheduled for Thursday, December 11, 2003. Mr. Cerruti stated that the venue would be a videoconference again. It was agreed that that this date is acceptable.

ADJOURNMENT.

The Chairman adjourned the meeting at 11:16 a.m.